Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 496/2012*, **

Communication submitted by:	Jean Ndagijimana, represented by TRIAL (Track Impunity Always)
Alleged victim:	The complainant
State party:	Burundi
Date of complaint:	9 March 2012 (initial submission)
Date of decision:	30 November 2017
Subject matter:	Torture or other cruel, inhuman or degrading treatment or punishment; lack of effective investigation and redress
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Torture and other cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture or cruel, inhuman or degrading treatment or punishment; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right to file a complaint; right to redress
Articles of the Convention:	Articles 2 (1), 12, 13 and 14, read in conjunction with articles 1 and 16.

1.1 The complainant is Mr. Jean Ndagijimana, a Burundian national born in Manege on 4 May 1958. He claims that Burundi has violated his rights under articles 2 (1), 12, 13 and 14, read in conjunction with article 1 or, in the alternative, with article 16 of the Convention against Torture. He is represented by TRIAL (Track Impunity Always).

1.2 Burundi declared that it recognized the competence of the Committee to receive and consider individual communications under article 22 of the Convention on 10 June 2003.

1.3 On 21 March 2012, in accordance with rule 114 (1) of its rules of procedure, the Committee requested the State party to take effective measures, for the duration of the Committee's consideration of the complaint, to prevent any threats or acts of violence to

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

** The following members of the Committee participated in the examination of the communication: Ms. Essadia Belmir, Mr. Alessio Bruni, Ms. Felice Gaer, Mr. Abdelwahab Hani, Mr. Claude Heller Rouassant, Mr. Jens Modvig, Ms. Sapana Pradhan-Malla, Ms. Ana Racu, Mr. Sébastien Touzé and Mr. Kening Zhang.

which the complainant or his family might be exposed, particularly as a result of having submitted this complaint, and to keep the Committee informed of the measures taken to that end.

The facts as submitted by the complainant

2.1 The complainant was working as a driver in the city of Cibitoke at the time of the events in question. On 15 February 2008, at around 10 a.m., the complainant was in front of his house, talking with his cousin about abuse that the cousin had been subjected to a few minutes earlier. The complainant's cousin was telling him that the governor of Cibitoke Province, Mr. Zéphyrin Barutwanayo, had stopped him on the Buganda-Murwi road half an hour earlier and confiscated the registration documents of the vehicle he was driving. While the complainant and his cousin were talking about this incident, the governor, escorted by four uniformed police officers, pulled up in a pickup truck and again ordered the complainant's cousin to give him his vehicle registration documents, even though they had been taken from him shortly before. The governor then ordered one of the four police officers to take the keys to the complainant's cousin's car and make the cousin get in the back of the truck without telling him why. The complainant then intervened on behalf of his cousin by asking the governor to let his cousin drive the car to where he was told rather than turn it over to the police officers. The governor, angered by the challenge to his orders, then ordered the complainant, too, into the back of the truck.

2.2 The complainant, refusing, crossed the street. The governor ordered three of the police officers to make him get in by force. After having grabbed him by the arms, they threw him onto the bed of the truck. The complainant landed face-first, hitting his head. The blow broke his glasses. The complainant nonetheless managed to pull himself out of the truck, but when the governor noticed, he ordered the three police officers to immobilize him, beat him and make him get back in.

2.3 One of the police officers struck him on the legs and feet with the butt of his rifle about ten times in an attempt to force them into the truck. The beating was so violent that the complainant fell to the ground. While the complainant was on the ground behind the truck and surrounded by police officers, the governor ordered them to beat him. The complainant claims that he was beaten for half an hour by the police officers, who hit him all over with the butts of their rifles and their truncheons. One of them struck him with the butt of his rifle on his right ankle and threatened him with his pistol in order to force him back into the truck.[1]

2.4 The complainant was in a critical condition and covered in blood when passers-by began to gather around the truck. Under increasing pressure from the crowd, the police officers stopped beating the complainant and left with the truck and the cousin's vehicle. The complainant was left lying on the ground, covered in blood and unable to stand up.

2.5 The passers-by who had stopped at the scene of the violence placed the complainant in a vehicle and took him to Prince Regent Charles Hospital in Bujumbura. The complainant had injuries all over his body. They required care immediately and for several weeks thereafter. The doctors carried out a number of tests and, after using various external methods to treat his ankle, to no avail, the attending physician prescribed an X-ray.[2] Although the doctors were of the view that the complainant would need to stay in the

[1] The complainant provides a statement that his cousin made to the complainant's representative in the case before the Committee. In the relevant parts of this undated statement, his cousin explains that the police officers took the complainant by the arms and "flung him into the back of the truck", in such a way that he "landed on his face and broke his glasses". He also mentions that the complaint "was pummelled while he was down. The governor's escort hit him on his legs and feet with the butt of his rifle." The complainant's cousin also states that he paid a fine and was imprisoned from 18 to 21 February 2008 for having "overloaded his car" and stoked the animosity of the crowd towards the governor.

[2] The complainant provides several bills for hospitalization and medicine. He has also transmitted a medical certificate dated 27 February 2008 showing that he sustained an injury to his right ankle, resulting in considerable bruising. The medical certificate states that the X-ray showed a severe contusion of the soft tissues of the right ankle, not a fracture of the bone.

hospital for a month to recover fully, he had to leave after three weeks as a result of his financial situation, which prevented him paying for hospitalization any longer. The complainant also had to pay to have his smashed glasses replaced.[3]

2.6 On 5 March 2008, the complainant left the hospital. Two days later, he states, five police officers turned up at his house in his absence and asked his children where he was. On 10 March 2008, the communal administrator, a relative of the complainant, informed him that the governor was looking for him and that that very morning he had ordered him to take the complainant into custody and let him know as soon as he had done so. The complainant therefore decided to leave the province and stay in Bujumbura for a month.

2.7 After his arrival in Bujumbura, the complainant turned to Radio Publique Africaine — one of the most popular radio stations in Burundi — which produced a story on the attack he had been subjected to by order of the governor of Cibitoke Province and on the searches the governor had carried out in an attempt to find him. The story received much attention. As a result of this public denunciation, the incidents were also brought to the attention of the State party's authorities, who did not respond. The governor, while being interviewed by the journalists from Radio Publique Africaine, publicly asked the complainant to report to his office for a discussion of his case. Fearing that he would be subjected to the same treatment as before, or detained without cause, the complainant did not respond to that request. A few months later, the governor again attempted to contact the complainant, this time through a neighbour, to propose a friendly settlement of their "dispute", but the complainant once again firmly rejected the proposal.

2.8 The complainant chose instead to pursue the legal proceedings that he had initiated on 6 March 2008, after leaving the hospital, by suing for damages in criminal proceedings against the governor of Cibitoke Province before the public prosecutor at the Supreme Court.[4] He cited his status as a victim of torture in the complaint.[5] After the submission of the complaint, the examining judge summoned the complainant and the governor several times in order to compare their accounts of the events. As the governor reported to the prosecutor's office only after the fifth summons, there was only one hearing before the examining judge. During the hearing, the governor denied responsibility for the blows received by the complainant. He nonetheless acknowledged that the police officers had beaten the complainant. The judge decided to hold another hearing, at which the governor did not appear. There has been no follow-up to the governor's refusal to appear.[6] No other investigative action has since been taken.

2.9 The complainant, noting that the proceedings had not moved forward three years after the incident, resubmitted his complaint to the public prosecutor at the Supreme Court on 3 February 2011.[7] This new submission did not lead to any investigation of the facts or prosecution of the perpetrators.

2.10 The complainant stresses that, in addition to the formal steps he took, the offences against him were publicly reported, in particular in broadcasts by Radio Publique Africaine. Consequently, they were certainly brought to the attention of the Burundian authorities, who could not have been unaware of them. However, no action has been taken to ensure that these serious offences are investigated, that the perpetrators of the acts are prosecuted and punished or that the complainant receives redress. The complainant was heard once by

[3] A copy of the bill is provided in the annex to the case file.

[4] Under article 138 of Act No. 1/08 of 17 March 2005, the Court Organization and Jurisdiction Act, only a prosecutor from the National Public Prosecution Service may take on, investigate and prosecute an offence with which a range of officials liable to first-instance proceedings in the Judicial Chamber of the Supreme Court have been charged. Provincial governors, mentioned in subparagraph 8 of the article, are among the officials who enjoy this jurisdictional privilege.

[5] A copy of the complaint may be found in the annex to the case file.

[6] The complainant is of the opinion that the examining judge could have ordered the governor to appear by direct summons, as provided for in article 47 of the Code of Criminal Procedure, which states that public prosecution officials may issue a summons to appear to anyone whose testimony they deem necessary. The duly summoned person is obliged to appear and respond to the summons.

[7] A copy of the complaint is included in the annex to the case file.

the prosecutor and no action was taken in follow-up, even though the perpetrators of the offences he had been subjected to were clearly identified.

2.11 The complainant points out that, under article 392 of the Criminal Code of Burundi, any judge who refuses to administer justice after having been petitioned to do so is liable to a prison sentence of 8 days to 1 month and/or a fine of 50,000 to 100,000 Burundi francs. He notes, however, that a case brought on the basis of that provision would have no objective chance of success, since in all likelihood the prosecutor would enjoy the same protection as those who had committed the offences. In view of his numerous attempts to institute legal proceedings, all in vain, the complainant also notes that both the judicial and the administrative authorities were, and are still, clearly unwilling to prosecute or punish those responsible. On 30 January 2012, the governor of Cibitoke Province was even promoted by the country's President to the position of Director General of the Burundian Rural Water Agency of the Ministry of Energy and Mines. For the complainant, the promotion is undeniable evidence that the Burundian authorities never intended to punish the governor for the violations of his rights. In addition, the governor's behaviour showed that he was wholly untroubled by the prospect of being prosecuted: since his return to Cibitoke, the complainant has encountered him on several occasions. The governor challenged him with his gaze and even suggested going for a drink, a suggestion that the complainant rejected categorically.

2.12 Besides the clear refusal of the authorities to determine responsibility in this case, the complainant draws attention to the general climate of impunity in Burundi, particularly with regard to acts of torture, which has been the subject of numerous reports issued by international bodies.[8] He stresses in particular that the Committee has expressed concern about the ineffectiveness of the judicial system of the State party and requested it to take vigorous measures to eliminate the impunity enjoyed by the perpetrators of acts of torture and ill-treatment, whether they are State officials or non-State actors; conduct timely, impartial and exhaustive inquiries; try the perpetrators of such acts and, if they are found guilty, sentence them to punishment commensurate with the gravity of the acts committed; and provide adequate compensation to the victims.[9] According to the complainant, the failings of the State party's judicial system perpetuate the climate of impunity, and the judiciary's dependence on the executive, a matter raised by the Committee,[10] is a major obstacle to the prompt initiation of impartial investigations when there are substantial grounds to believe that an act of torture has been committed. In conclusion, the complainant states that he cannot be expected to attempt to take legal recourse against the inaction of the judicial authorities, as any such attempt would be doomed to failure.

2.13 The complainant therefore submits that: (a) the domestic remedies available to him have provided him with no satisfaction, as the authorities, who should have opened a criminal investigation, have not responded to his complaints; (b) the remedies have taken an unreasonably long time, as it had been four years since the events in question, and no investigation had been opened; and (c) it was dangerous for him to take further steps, as the persons responsible for the acts of torture were the provincial governor and police officers.

2.14 The complainant states that he is still affected — he has back trouble, for instance — by the beating he received. He is physically diminished, unable to lift heavy objects or work in the fields, which puts him at a considerable disadvantage. His social and financial situation is also of concern, as he has not found work since the events in question and is heavily indebted as a result of his hospitalization.

The complaint

3.1 The complainant claims that Burundi has violated his rights under articles 2 (1), 12, 13 and 14, read in conjunction with article 1 or, in the alternative, with article 16 of the Convention.

[8] The complainant refers specifically to the Committee's concluding observations on the initial report of Burundi, adopted on 20 November 2006 (see CAT/C/BDI/CO/1, para. 21).

[9] Ibid., para 11.

[10] Ibid., para. 12. The complainant also refers to the Report of the Independent Expert on the situation of human rights in Burundi (see A/HRC/17/50, para. 59).

3.2 According to the complainant, the abuse to which he was subjected caused him severe pain and suffering and constitutes torture as defined in article 1 of the Convention: police officers threw him onto the bed of the truck, and his head slammed into it with such force that his glasses broke; for half an hour, after he fell to the ground, he was severely beaten all over his body by police officers wielding the butts of their rifles and their truncheons. He was brutally hit with a rifle butt on the legs and feet, in particular on his right ankle, and was left with a physical impairment that it took him weeks to recover from. He was also threatened by one of the police officers, who turned his gun on him, causing him considerable distress. The governor and the police then left him lying on the ground, in a serious condition without any help. These serious acts, which caused injuries that required several weeks of medical care, were clearly perpetrated intentionally by agents of the State party to punish the complainant for having questioned the orders of the governor of Cibitoke Province and to intimidate him to stop him defending his cousin from the governor's alleged abuses.

3.3 The complainant also points out that the State party, in breach of its obligations under article 2 (1) of the Convention, has not taken the necessary measures, legislative or otherwise, to prevent the practice of torture in Burundi. According to the complainant, the State party has also failed to honour its obligation to investigate the torture inflicted on him and thus to bring the perpetrators to justice. The complainant adds that his is not an isolated case and that serious human rights violations by police officers go largely unpunished in Burundi. According to the complainant, since the State party has not adopted the legislative or other measures needed to prevent torture, it has failed to meet its obligations under article 2 (1) of the Convention.

3.4 The complainant also maintains that article 12 of the Convention, which requires the authorities to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed, has been violated by the State party in his case.[11] He recalls that it is not necessary, for the purposes of article 12, for a formal complaint to have been lodged. In this case, he notes that on 6 March 2008, after leaving the hospital, he submitted a criminal complaint to the public prosecutor at the Supreme Court and that on 2 February 2011, as a result of the total absence of progress in the case, he had to resubmit the complaint. In addition, there was a radio report about his case, and, in view of the large audience of the station that broadcast the story, the authorities could not but have been fully informed of the acts of torture that he had endured. They were therefore automatically required to investigate those acts. However, no effective, thorough and impartial investigation has ever been conducted. With the exception of a single hearing to cross-examine the parties, which did not result in any follow-up, no other investigative step has been taken. The complainant also stresses that Burundian criminal law does not oblige prosecutors to prosecute perpetrators of torture or even to order that such acts be investigated.[12] The complainant therefore concludes that, since a genuine, prompt and impartial investigation into the allegations of torture to which he was subjected was not carried out, the State party acted in violation of its obligations under article 12 of the Convention.

3.5 The complainant also invokes article 13 of the Convention, while again noting that his case was not examined promptly and impartially.

3.6 The complainant is also of the view that the State party is in breach of its obligation under article 14, since the crimes perpetrated against him have gone unpunished and since he has not received any compensation — including for medical expenses — or any form of rehabilitation for the torture he endured. In view of the passivity of the judicial authorities, other remedies to obtain redress, such as a civil suit for damages, are entirely unlikely to be

[11] The complainant refers to *Sahli v. Algeria* (CAT/C/46/D/341/2008), para. 9.6; *Thabti v. Tunisia* (CAT/C/31/D/187/2001), para. 10.4; *M'Barek v. Tunisia* (CAT/C/23/D/60/1996), para. 11.7; and *Blanco Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.2.

[12] The complainant refers to the Committee's recommendation that the State party remove all doubt regarding "the obligation of the competent authorities to institute, systematically and on their own initiative, impartial inquiries *in all cases where there are* substantial grounds for believing that an act of torture has been committed" (see CAT/C/BDI/CO/1, para. 22).

successful. The Burundian authorities have taken few measures to compensate victims of torture, a point raised by the Committee in its concluding observations following its consideration of the State party's report in 2006 (see CAT/C/BDI/CO/1, para. 23). The complainant adds that he is still affected by the physical consequences of the beating he received — he is unable to lift heavy objects or work in the fields — and that he has never benefited from any form of rehabilitation designed to ensure that he recovers as fully as possible in physical, psychological, social and financial terms. He also notes that, in its concluding observations, the Committee also expressed concern about the failure to provide victims of torture with the means to exercise this right. Furthermore, the complainant recalls that the State party's obligation to guarantee the provision of redress includes compensation for damages and the adoption of measures to prevent the acts from occurring again, a step that would involve, first of all, opening an investigation and prosecuting the perpetrators.[13] The crime committed against the complainant remains unpunished, a situation that is a violation of his right to redress under article 14 of the Convention.

3.7 The complainant states again that the violence inflicted on him was torture, in accordance with the definition set out in article 1 of the Convention. In the alternative, he maintains that, even if the Committee does not regard that violence as torture, the abuse he endured was cruel, inhuman or degrading treatment and that the State party also has an obligation, under article 16 of the Convention, to prevent public officials from committing, instigating or tolerating such acts and to provide redress for the damage caused.

State party's observations on admissibility and the merits

4.1 On 21 March 2012, the State party was requested to submit its observations on the admissibility and merits of the communication. Reminders were sent on 9 November 2012, 5 March 2013, 12 August 2013, 7 February 2014 and 10 February 2015. On 4 June 2015, the State party submitted its observations on the admissibility and merits of the communication. It notes that the complainant has not exhausted all available domestic remedies, as required under article 22 (5) (b) of the Convention. According to the State party, the complainant rushed to submit his case to the Committee, without waiting for the Burundian courts to respond to his complaint. The State party submits that the proceedings that had begun were still far from having taken an unreasonably long time. Furthermore, for the complainant to say that it would have been dangerous for him to attempt other proceedings was "baseless".

4.2 The State party also contests the complainant's assertion that the remedies he could seek were ineffective, of no use and unavailable by noting that the investigation of his case had proceeded to the point that the public prosecutor had already arranged a hearing to cross-examine the parties, which was likely to have been followed by many others before the case was referred to the competent court or dismissed. The State party submits that the prosecutor's efforts were thwarted by the inertia of the complainant, who at one point stopped taking an active interest in the progress of his case. The complainant is therefore wrong to submit that he was obstructed by the inaction of the judicial authorities, who, for the case to move forward, are simply waiting for the complainant. The complainant, according to the State party, sabotaged the investigations by denigrating the Burundian judicial authorities, who are making noble efforts to ensure the proper administration of justice. In addition, it would not have been dangerous for the complainant to initiate other procedures, as the two antagonists see each other every day, and the complainant, as many witnesses could confirm, has not been threatened.

4.3 The State party is of the view that it is not in a position to submit observations on the merits of the case, let alone to comment on a case that is already before the courts. It submits that Mr. Barutwanayo, former governor of Cibitoke Province, is an ordinary citizen who no longer holds a government position and can therefore be brought before the domestic courts; neither does he enjoy any immunity from prosecution. The State party,

[13] The complainant refers to *Guridi v. Spain* (CAT/C/34/D/212/2002), para. 6.8. He adds that these views are in line with the jurisprudence of the Human Rights Committee (*Bautista v. Colombia*, para. 8.2; and *Coronel et al. v. Colombia*, CCPR/C/76/D/778/1997, para. 6.2).

referring to Mr. Barutwanayo's appearance before the examining judge,[14] adds that the complaint submitted by Mr. Ndagijimana led to an investigation. It therefore cannot be said that no legal proceedings could be instituted if any of the persons under investigation in the case were found to have borne liability. Accordingly, the State party takes the position that the Committee should declare the communication inadmissible.

4.4 The State party asks that the protection measures requested by the complainant to prevent any acts of reprisal should be rejected, as he has never been subjected to persecution, and there is no reason to believe that he is at risk of irreparable harm.

Complainant's comments on the State party's submission

5.1 The complainant submitted his comments on the State party's submission on 23 July 2015. Maintaining that the Committee requires only the exhaustion of effective, useful and available remedies, he rejects the contention that he has not exhausted domestic remedies. In that regard, he again notes that the criminal complaint he submitted on 6 March 2008 led to a single cross-examination of the parties, the State party's assertion to the contrary notwithstanding.[15] The complainant submits that holding a single hearing cannot be deemed sufficient and that doing so is an indication that the State party has not conducted a prompt, effective and impartial investigation. According to him, the former governor of Cibitoke Province even acknowledged during the hearing that the complainant had been beaten by police officers. The complainant also states that it was not he but Mr. Barutwanayo, against whom no action was taken, who stood in the way of the investigation and the administration of justice by failing to respond to the summonses he was sent by the prosecutor's office.[16] Indeed, on 3 February 2011, in response to the inaction of the judicial authorities, the complainant again petitioned the public prosecutor at the Supreme Court to proceed with the investigation of his complaint, but to no avail. It had been four years since the incident, but there had still been no effective investigation into the violations of the complainant's rights.

5.2 The complainant also notes that domestic remedies have been unreasonably prolonged. Drawing on the Committee's jurisprudence,[17] he considers that taking four years to initiate an investigation into allegations of torture is excessively long. Moreover, it would have been dangerous for him to pursue other options, given the pressure he was under, which forced him, for his own protection, to leave Cibitoke Province for a month after he was discharged from the hospital. The complainant also recalls that the police went to his home in search of him and that the former governor of Cibitoke Province had ordered the communal administrator to arrest him.

5.3 In addition, the complainant points out that he never dropped the complaint that he had submitted to the domestic authorities but that, as the acts remained unpunished for a long time, he had no choice other than to bring his case to an international court. He adds that the procedures are not mutually exclusive and that, despite the submission of his complaint to the Committee, it would be desirable for the Burundian authorities to initiate proceedings and prosecute the perpetrators. Lastly, he maintains that the protection measures granted by the Committee are appropriate.

[14] The State party asserts that the complainant himself "admits that Mr. Barutwanayo appeared more than once before the examining judge".

[15] The complainant points out that he never stated that Mr. Barutwanayo appeared more than once, but rather that Mr. Barutwanayo had been summoned several times but appeared only once.

[16] See footnote 6 above.

[17] The complainant refers to *Halimi-Nedzibi v. Austria* (CAT/C/11/D/8/1991), para. 13.5, in which the Committee determined that a delay of 15 months before initiating an investigation into allegations of torture, which then failed to yield a result in two years, is unreasonably prolonged and releases the complainant from the requirement to exhaust domestic remedies. He also invokes *Dimitrijevic (Dragan) v. Serbia and Montenegro* (CAT/C/33/D/207/2002), paras. 2.3 and 5.2, *Dimitrijevic (Danilo) v. Serbia and Montenegro* (CAT/C/35/D/172/2000), paras. 2.5 and 6.2, and *Dimitrov v. Serbia and Montenegro* (CAT/C/34/D/171/2000), paras. 2.3 and 6.1.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, as proceedings were instituted by the public prosecutor at the Supreme Court. It also notes that, according to the State party, the first cross-examination was followed by others. The Committee, however, has not received any other information or evidence that would enable it to determine what progress has been made or the potential effectiveness of the proceedings. The Committee also notes that nine years have passed since 6 March 2008, when the complainant filed his criminal complaint. The Committee finds that, in the circumstances, the inaction of the competent authorities has made it unlikely that any remedy that might provide effective reparation can be initiated and that, in any event, the domestic proceedings have been unreasonably prolonged. Accordingly, the Committee considers that it is not precluded from considering the communication by article 22 (5) (b) of the Convention.

6.3 In the absence of any obstacle to the admissibility of the communication, the Committee proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 2 (1), 12, 13, 14 and 16 of the Convention.

Failure of the State party to cooperate

7. The State party was invited to submit its comments on the merits of the communication on 26 November 2015, 25 April 2016, 29 June 2016 and 24 November 2016. The Committee takes note of the State party's explanation of its decision not to make any observations on the merits of the communication in its submission of 4 June 2015 but finds it regrettable that — despite repeated reminders — the State party has made no such observations. The Committee recalls that the State party is obliged, pursuant to the Convention, to submit to the Committee written explanations or statements clarifying the matter and indicating the measures, if any, that may have been taken to remedy the situation. In the absence of a response from the State party, due weight must be given to the complainant's allegations, which have been properly substantiated.

Consideration of the merits

8.1 The Committee has examined the complaint in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention. As the State party has not provided any observations on the merits, due weight must be given to the complainant's allegations.

8.2 The Committee notes the complainant's allegation that he was severely beaten for half an hour by police officers, who struck him all over his body — on his right ankle in particular — with the butts of their rifles and their truncheons, that the police left him, covered in blood, in a critical condition and that he was then taken to the hospital by passers-by. According to a medical certificate dated 27 February 2008, which he attached to his submissions, the complainant did indeed sustain a severe contusion of the soft tissues of his right ankle. It also notes that the governor of Cibitoke Province acknowledged during a hearing at the prosecutor's office that police officers had beaten the complainant. In a statement submitted to the Committee, moreover, the complainant's cousin mentions in particular the violent blows with rifle butts to the complainant's legs and feet. The Committee likewise takes note of the complainant's allegations that the blows he received caused extreme pain and mental suffering and were deliberately inflicted by agents of the State with the objective of punishing and intimidating him. At no time were these allegations contested by the State party. In the circumstances, the Committee concludes that

the complainant's allegations must be taken fully into account and that the facts as presented constitute torture within the meaning of article 1 of the Convention.[18]

8.3 Having reached this conclusion, the Committee does not consider it necessary to examine the same claims from the perspective of article 16 of the Convention, put forward by the complainant in the alternative.

8.4 The complainant also invokes article 2 (1) of the Convention, under which the State party should have taken effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The Committee observes that the complainant was beaten and then left in an alarming condition by the police officers. He was subjected to serious abuse committed by agents of the State, whom he reported on several occasions; no one has been punished for the abuse. Accordingly, the Committee finds that a violation of article 2 (1), read in conjunction with article 1 of the Convention, has been committed.[19]

8.5 In respect of articles 12 and 13 of the Convention, the Committee has taken note of the complainant's allegations that, on 15 February 2008, he was beaten by police officers accompanying the governor of Cibitoke Province. Although he submitted a complaint to the public prosecutor at the Supreme Court on 6 March 2008, after which a hearing was held, and resubmitted his complaint on 3 February 2011, it has been more than nine years since the incident, and no investigation has been conducted. The Committee is of the view that taking so long to initiate an investigation into allegations of torture is patently unjustified. It also takes note of the State party's argument that the lack of progress in the investigation can be put down to a lack of cooperation on the part of the complainant. In this regard, the Committee draws attention to the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed automatically to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.[20] The Committee therefore finds a violation of article 12 of the Convention.

8.6 By failing to meet this obligation, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee the right of the complainant to lodge a complaint, which presupposes that the authorities provide a satisfactory response by launching a prompt and impartial investigation.[21] The Committee therefore finds that a violation of article 13 of the Convention has also been committed.

8.7 The Committee recalls that article 14 of the Convention not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. Redress should cover all the harm suffered by the victim. It encompasses, among other measures, restitution, compensation and guarantees of non-repetition, while taking into account the circumstances of each case.[22] In this case, the Committee has noted the complainant's claim that he is experiencing the consequences — back trouble, for instance, and the loss of physical capacity — of the treatment he suffered. He has nonetheless not benefited from any treatment or rehabilitation measures. The Committee is of the view that the failure to conduct a prompt and impartial investigation has deprived the complainant of the possibility of availing himself of his right to redress and is thus a violation of article 14 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it disclose a violation of article 1, read alone and in conjunction with article 2 (1), and articles 12, 13 and 14 of the Convention.

10. The Committee urges the State party to: (a) complete the investigation that was initiated into the incidents in question, with a view to bringing to justice all those responsible for the treatment inflicted on the complainant; (b) provide the complainant with

[18] See, for example, *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.2, and *Kabura v. Burundi* (CAT/C/59/D/549/2013), para. 7.2.

[19] See, inter alia, *E.N. v. Burundi* (CAT/C/56/D/578/2013), para. 7.5.

[20] See, inter alia, *Niyonzima v. Burundi*, para. 8.4. See also *Kabura v. Burundi*, para. 7.4.

[21] *Niyonzima v. Burundi*, para. 8.5.

[22] Ibid., para. 8.6. See also *Ntikarahera v. Burundi* (CAT/C/52/D/503/2012), para. 6.5.

appropriate reparation, including measures of compensation for the material and psychological harm he suffered, restitution, rehabilitation, measures of satisfaction and guarantees of non-repetition; and (c) take all necessary measures to prevent any threats or acts of violence to which the complainant or his family might be exposed, in particular as a result of having lodged the present complaint. In accordance with rule 118 (5) of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date this decision is transmitted, of the action it has taken in response.